

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico

Filed 8/24/2026 8:53 AM

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

No. A-1-CA-42550

ALISA FREEMAN,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF LINCOLN COUNTY

John P. Sugg, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Sarah M. Karni, Assistant Solicitor General

Albuquerque, NM

for Appellee

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Rio Rancho, NM

for Appellant

MEMORANDUM OPINION

BACA, Judge.

{1} Defendant Alisa Freeman appeals her conviction for resisting, evading, or
obstructing an officer (resisting), contrary to NMSA 1978, Section 30-22-1(D)
(1981). Defendant argues that the district court erred by (1) usurping the jury's role
and finding that Officer Darby was lawfully discharging his duties, and (2) denying

1 a portion of her requested jury instruction. Defendant further argues that the State
2 presented insufficient evidence that Officer Darby was acting in the lawful discharge
3 of his duties at the time of the offense. For the following reasons, we affirm.

4 **BACKGROUND**

5 {2} Because this is a memorandum opinion and the parties are familiar with the
6 facts and procedural history of this case, we set forth here only a brief overview of
7 the facts of this case. We reserve discussion of additional facts as necessary for our
8 analysis.

9 {3} On the night of the incident, Defendant called 911 and told the dispatcher that
10 her boyfriend had fallen and hit his head after suffering a panic attack. Police were
11 dispatched to the residence to investigate a potential domestic disturbance after
12 Defendant's boyfriend told the dispatcher that he had suffered a panic attack because
13 he and Defendant "had an argument." When officers arrived at the house, one
14 officer, Officer Garcia, spoke to Defendant's boyfriend while another officer,
15 Officer Darby, spoke with Defendant in a bedroom in the back of the house.

16 {4} While talking to Officer Darby, Defendant attempted to leave the room, but
17 Officer Darby would not let her leave. Defendant attempted to "nudge past" Officer
18 Darby, who then "put [his] hands on [Defendant]" and told Defendant, "Don't put
19 your hands on me again." Defendant then "smacked" Officer Darby's hat off his
20 head.

1 {5} Officer Darby and Officer Garcia then handcuffed Defendant, and had “to
2 drag [Defendant] out” because Defendant continued to “pull away” from Officer
3 Darby as he was attempting to escort Defendant out of the residence. Defendant was
4 subsequently charged with one count of battery upon a peace officer (Count 1),
5 contrary to NMSA 1978, Section 30-22-24 (1971); and one count of resisting an
6 officer (Count 2), contrary to Section 30-22-1(D).

7 {6} At trial, Defendant’s primary theory of the case focused on whether Officer
8 Darby was in the lawful discharge of his duties at the time of the offense. After both
9 sides rested and before instructing the jury, the district court met with the parties to
10 discuss their proposed jury instructions. Defendant requested that the jury be given
11 a nonuniform jury instruction modeled after *State v. Penman*, 2024-NMSC-024,
12 ¶ 21, 562 P.3d 537, which reads:

13 A peace officer is lawfully discharging their duties when they are
14 acting within the scope of what the officer is employed to do.

15 A peace officer is not lawfully discharging their duties when the
16 officer has no grounds to believe that the defendant was committing or
17 had committed a criminal offense, or when the peace officer is on a
18 personal frolic, acting in bad faith, or using unreasonable force.

19 {7} During the hearing to discuss the proposed jury instructions, Defendant
20 conceded that the evidence could not demonstrate that Officer Darby was on a
21 personal frolic, but maintained that the evidence presented was sufficient to raise a
22 question of fact as to whether Officer Darby was acting in bad faith. The district

1 court gave the jury the first paragraph of the proposed jury instruction, but refused
2 to give the jury the second paragraph of the proposed instruction.

3 {8} Ultimately, the district court instructed the jury, on the elements of the crime
4 of resisting, as follows:

5 For you to find [D]efendant guilty of resisting, evading[,] or
6 obstructing an officer, as charged in Count 2, the State must prove to
7 your satisfaction beyond a reasonable doubt each of the following
8 elements of the crime:

9 1. [Officer] Darby was a peace officer in the lawful discharge
10 of duty;

11 2. [D]efendant knew [Officer] Darby was a peace officer;

12 3. [D]efendant resisted or abused [Officer] Darby in the
13 lawful discharge of [Officer] Darby's duties as a peace officer[;]

14 4. This happened in New Mexico on or about the 9th day of
15 February 2024.

16 The district court separately instructed the jury:

17 A peace officer is lawfully discharging their duties when they are
18 acting within the scope of what the officer is employed to do.

19 {9} The jury found Defendant guilty of resisting as charged in Count 2 of the
20 "Criminal Information." Defendant appeals.

21 **DISCUSSION**

22 **I. The District Court's Ruling on Lawful Discharge**

23 {10} Defendant first contends that the district court improperly engaged in fact-
24 finding and found that Officer Darby acted within the lawful discharge of his duties.

1 Defendant further contends that, as a result of this alleged improper fact-finding, the
2 district court violated her Sixth Amendment right to present a defense and to have a
3 jury decide all elements of the crime by lessening the State’s evidentiary burden,
4 and, by prohibiting Defendant from arguing that element of the case.

5 {11} We do not reach Defendant’s constitutional challenge however, because, after
6 reviewing the record, it is clear that the district court did not rule that the State had
7 met its evidentiary burden. Instead, the district court’s ruling—as manifested by its
8 partial rejection of the jury instruction Defendant sought—was that Defendant was
9 not entitled to the second paragraph of that instruction because there was insufficient
10 evidence presented that would allow a reasonable jury to find that Officer Darby was
11 acting in bad faith or using unreasonable force, and therefore not lawfully
12 discharging his duties.

13 {12} In any event, our Supreme Court held in *Penman*, that “whether an officer
14 acted within the lawful discharge of their duties can be decided pretrial as a matter
15 of law where the record is clear that the relevant facts are not disputed.” 2024-
16 NMSC-024, ¶ 3. As it relates to excessive force specifically, our Supreme Court has
17 also held that, when a defendant asserts self-defense against a police officer, a trial
18 court may determine, as a matter of law, that reasonable minds could not differ with
19 respect to whether an officer used excessive force. *See State v. Ellis*, 2008-NMSC-
20 032, ¶ 17, 144 N.M. 253, 186 P.3d 245. Further, the district court may refuse to give

1 a requested instruction where there is no evidence that supports the instruction. *See*
2 *State v. Benavidez*, 2026-NMSC-007, ¶ 55, ___ P.3d ___ (explaining that “[a]
3 defendant is entitled to an instruction in support of a defense theory so long as there
4 is evidence to support the instruction”); *State v. Nieto*, 2000-NMSC-031, ¶ 15, 129
5 N.M. 688, 12 P.3d 442 (same); *see also State v. Brown*, 1996-NMSC-073, ¶ 34, 122
6 N.M. 724, 931 P.2d 69 (explaining that “[w]hen evidence at trial supports the giving
7 of an instruction on a defendant’s theory of the case, failure to so instruct is
8 reversible error”). It follows then, that a district court may deny a requested
9 instruction after determining, as a matter of law, that a reasonable juror could not
10 find, based on the evidence presented, that an officer was acting in bad faith or
11 exercised unreasonable force. Such is not tantamount to establishing the state’s
12 evidentiary burden and depriving a defendant of the Sixth Amendment right to
13 present a defense.

14 **II. The Partially Denied Jury Instruction**

15 {13} As stated, the district court refused the second paragraph of Defendant’s
16 requested jury instruction, which mirrored the language in *Penman*, 2024-NMSC-
17 024, ¶ 21, and would have instructed the jury:

18 A peace officer is not lawfully discharging their duties when the
19 officer has no grounds to believe that the defendant was committing or
20 had committed a criminal offense, or when the peace officer is on a
21 personal frolic, acting in bad faith, or using unreasonable force.

1 Defendant argues that the district court erred by refusing to give the second
2 paragraph of her requested jury instruction.

3 {14} “A defendant is fairly entitled to a jury instruction that accurately describes
4 the essential elements of the crime and what the state would have to prove for a
5 conviction.” *State v. Haagenon*, 2026-NMCA-052, ¶ 11, 587 P.3d 887 (text only)
6 (citation omitted); *see State v. Rudolfo*, 2008-NMSC-036, ¶ 27, 144 N.M. 305, 187
7 P.3d 170 (clarifying that an instruction should be given when there is “evidence
8 sufficient to justify a reasonable jury determination as to whatever element is under
9 consideration” (internal quotation marks omitted)). In deciding whether a proposed
10 instruction is proper, “the trial court must not weigh the evidence, but must simply
11 determine whether such evidence exists.” *State v. Privett*, 1986-NMSC-025, ¶ 20,
12 104 N.M. 79, 717 P.2d 55. The issue of whether a given jury instruction is defective
13 presents a mixed question of law and fact, which we review de novo. *See State v.*
14 *Laney*, 2003-NMCA-144, ¶ 38, 134 N.M. 648, 81 P.3d 591. Additionally, because
15 there is no dispute about whether the issue was preserved, we review for reversible
16 error. *See Haagenon*, 2026-NMCA-052, ¶ 11. “Denial of a jury instruction rises to
17 reversible error if the defendant shows they were entitled to the denied instruction
18 or that a reasonable juror could have been confused or misdirected by the omission.”
19 *State v. Stalter*, 2023-NMCA-054, ¶ 22, 534 P.3d 989 (internal quotation marks and
20 citation omitted).

1 {15} Defendant maintains that there was evidence that Officer Darby acted both in
2 bad faith and used unreasonable force. As to bad faith, Defendant contends that
3 Officer Darby acted in bad faith because he had no legitimate reason to detain
4 Defendant. In support of this argument, Defendant points to the fact that Officer
5 Darby was dispatched to investigate a potential domestic disturbance, which she
6 contends is a nonspecific criminal situation. Defendant further argues that, even if
7 Officer Darby's investigation of the potential domestic disturbance was not done in
8 bad faith, his investigation had been completed by the time he encountered
9 Defendant, and thus he had no reason to continue questioning Defendant in her
10 bedroom.

11 {16} We are not persuaded because, even assuming without deciding that Officer
12 Darby was detaining Defendant for suspicion of committing a domestic-related
13 crime, no reasonable juror could conclude that Officer Darby was doing so in bad
14 faith, given Officer Darby's unchallenged testimony that he was dispatched to the
15 residence to investigate a potential domestic disturbance. And even if we accept that
16 Officer Darby had concluded his investigation into the potential domestic
17 disturbance by the time he encountered Defendant, no reasonable juror could
18 conclude that Officer Darby was acting in bad faith merely because he continued to
19 ask follow-up questions about a domestic disturbance between the period of time
20 where the investigation concluded and Defendant struck the hat from the officer's

1 head. Further, no reasonable juror could conclude that Officer Darby arrested
2 Defendant in bad faith, given Officer Darby’s uncontroverted testimony that he
3 arrested Defendant after she struck the hat from his head because he felt, at that
4 moment, that a battery upon a peace officer had occurred.¹

5 {17} Turning to unreasonable force, Officer Darby testified that he “pushed”
6 Defendant away from him after she tried to “nudge” past him as she tried to leave
7 the room. After Defendant struck the hat from his head, Officer Darby “pushed
8 [Defendant] away from [him],” “pointed [Defendant] into the wall,” and attempted
9 to handcuff her. Officer Darby called for help over the radio because he was unable
10 to handcuff Defendant by himself. Officer Garcia went to assist Officer Darby.
11 Together, the officers “moved [Defendant] to the bed” and successfully handcuffed
12 Defendant’s hands behind Defendant’s back. Officer Darby testified that he had “to
13 drag [Defendant] out” because Defendant pulled away from Officer Darby as he was
14 attempting to escort her out of the residence. Based on the facts presented to the jury,
15 we conclude that reasonable minds could not differ about whether Officer Darby

¹Defendant also suggests that Officer Darby’s actions are questionable when viewed through the lens of the Fourth Amendment of the United States Constitution. We do not opine on the constitutionality of Officer Darby’s conduct; however, we note that our case law has clearly established that “the fact that an arrest was unlawful does not preclude a finding that an officer acted in the ‘lawful discharge’ of his duties.” *See State v. Tapia*, 2000-NMCA-054, ¶ 16, 129 N.M. 209, 4 P.3d 37. Thus, even assuming without deciding that Officer Darby’s actions were unconstitutional, that alone would not entitle Defendant to her proposed instruction.

1 used unreasonable force. Officer Darby testified that he was trying to prevent
2 Defendant from leaving the room for safety reasons, namely that he did not want
3 Defendant to be able to access the kitchen, where there were knives. Although
4 Defendant’s boyfriend testified that he saw officers “beating the crap out of
5 [Defendant],” that isolated testimony was too vague to meaningfully help the jury
6 evaluate whether the force Officer Darby exerted was unreasonable.

7 {18} In sum, we conclude that, based on the evidence presented, reasonable minds
8 could not differ with respect to whether Officer Darby acted either in bad faith or
9 used unreasonable force. Therefore, the district court did not err in denying the
10 second paragraph of Defendant’s requested instruction.

11 **III. Sufficient Evidence Supports Defendant’s Conviction**

12 {19} Lastly, Defendant argues that sufficient evidence does not support her
13 conviction.

14 {20} “[A]ppellate courts review sufficiency of the evidence from a highly
15 deferential standpoint.” *State v. Slade*, 2014-NMCA-088, ¶ 13, 331 P.3d 930
16 (omission, internal quotation marks, and citation omitted). “[T]he test to determine
17 the sufficiency of evidence in New Mexico . . . is whether substantial evidence of
18 either a direct or circumstantial nature exists to support a verdict of guilt beyond a
19 reasonable doubt with respect to every element essential to a conviction.” *State v.*
20 *Sutphin*, 1988-NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d 1314. “Substantial

evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *State v. Berry*, 2025-NMCA-009, ¶ 14, 570 P.3d 235 (alteration, internal quotation marks, and citation omitted). In reviewing the sufficiency of the evidence, “we must view the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict.” *State v. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176.

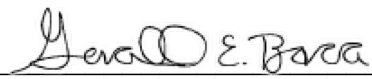
{21} Defendant’s sole challenge on this issue is that Officer Darby either acted in bad faith or used unreasonable force, and thus the State failed to prove that Officer Darby was in the lawful discharge of duty at the time of the offense. However, as stated above, there was no evidence that would allow a reasonable jury to find that Officer Darby either acted in bad faith or used unreasonable force. Defendant stipulated that Officer Darby was not on a personal frolic. Additionally, there was evidence suggesting that Officer Darby *was* lawfully discharging his duties; i.e., “acting within the scope of what the officer is employed to do.” *See Penman*, 2024-NMSC-024, ¶ 21. Officer Darby was dispatched to the residence to investigate a potential domestic disturbance and secure the scene before emergency medical services arrived. When he encountered Defendant, circumstances quickly escalated, and Defendant slapped Officer Darby’s hat from his head. Officer Darby then detained Defendant because he believed Defendant had committed a crime by

1 smacking the hat from his head. For these reasons, we conclude that sufficient
2 evidence supports the jury's finding that Officer Darby was acting within the scope
3 of what he was employed to do, and thus in the lawful discharge of his duties at the
4 time of the offense.

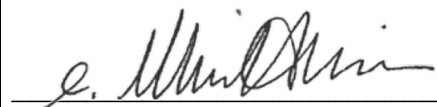
5 **CONCLUSION**

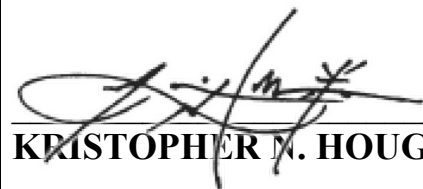
6 {22} For the foregoing reasons, we affirm Defendant's conviction.

7 {23} **IT IS SO ORDERED.**

8 
9 **GERALD E. BACA, Judge**

10 **WE CONCUR:**

11 
12 **J. MILES HANISEE, Judge**

13 
14 **KRISTOPHER N. HOUGHTON, Judge**